IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2004

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THE HON'BLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.167 OF 1993
AND
CROSS OBJECTION NO.64 OF 1999

G. Ramachandran .. Appellant in
second appeal and
respondent in
cross objection

-Vs-

1. Vimala @ Kuppammal
2. Minor Jayabarathi
3. Minor Jayagowri
(Respondents 2 and 3
are rep. by their mother
and next friend, the
first respondent) .. Respondents in
second appeal and
cross objectors

This second appeal has been preferred under Section 100 of CPC against the judgment and decree dated 3.10.1991 passed in AS No.99 of 1991 on the file of the learned Principal District Judge, Vellore, N.A. District confirming the judgment and decree dated 25.1.1991 in OS No.80 0 of 1988 on the file of the learned Additional District Munsif, Vellore, North Arcot District and the cross objection is preferred under Order 41 Rule 22 of CPC.

!For Appellant : Mr.D. Krishnan

^For Respondents: Mr.V.Natarajan

:COMMON JUDGMENT

This judgment shall govern both the second appeal and the cross objection.
2. This second appeal has been brought forth from the judgment of the learned Principal District Judge, Vellore made in AS No.99 of 1991 wherein the judgment of the trial court dismissing the suit was confirmed.
3. The following short facts are noticed in the pleadings of the

parties:
The plaintiff was married to one Chandra on 21.8.1978 and in the course of the wedlock, three children were born. The plaintiff, before his marriage with the said Chandra, came into contact with the first defendant, but she was already married to one Kasi. She has been living with the said Kasi and has given birth to several children. The first defendant's real name was Kuppammal and the plaintiff, after he came into contact with her, changed her name as Vimala. The first defendant had been a woman with loose morals and her husband Kasi never took her seriously and he has satisfied with the earnings she got from her paramours. After the marriage of the plaintiff with Chandra, the plaintiff was not keen in continuing relationship with the first defendant very often. while so, in 1985, the first defendant, in order to extract lumpsum from the plaintiff, filed a maintenance case in MC No.16/85 on the file of the Chief Judicial Magistrate, Vellore for herself and on behalf of her two children, namely, the defendants 2 and 3. The first defendant filed the petition with the false name called Vimala. Because of the said benami, the plaintiff has signed in the memo, wherein he agreed to pay Rs.100/- towards maintenance of the defendants. The plaintiff, even without knowing the contents of the same, signed in the endorsement in order to get rid of the case. The first defendant, who has been keeping quiet all along the years, with a view to extract the sum filed the applications in MC No.1 of 1988 to enforce the order of maintenance and MC No.2/88 for enhancement of the maintenance. Under the stated circumstances, it has become necessary for the plaintiff to file the suit for a declaration that the first defendant is not a legally wedded wife of the plaintiff and the second and the third defendants were not born to the plaintiff and for the consequential relief of permanent injunction from executing the order passed in the maintenance case.
4. The suit was resisted by the defendants stating that the first defendant is the legally wedded wife of the plaintiff and the second and the third defendants were born out of the said wedlock; that the first defendant was, originally, married to one Kasi; that there was a divorce, since he was suffering from T.B.; that the plaintiff married the first defendant according to Suyamariyathai form of marriage in the year 1974 and both children were born subsequent to the said marriage; that her original name was Kuppammal and after the marriage in the year 1974, the plaintiff altered her name as one Vimala; that because of the instigation of the plaintiff's parents, the plaintiff has married one Chandra and the said marriage is a bigamous one and also illegal and invalid; that under the stated circumstances, there arose a necessity for filing the maintenance case in Mc No.16 of 1985, wherein he has filed a memo; and that in view of the same, an order was passed, and in order to defeat the status and right of the defendants, the plaintiff has filed the suit and the same was to be dismissed.
5. The trial court framed necessary issues, tried the suit and dismissed the same. Aggrieved, the plaintiff took it on appal, which was also dismissed. Thus, this second appeal has been brought forth by the plaintiff, aggrieved over the judgment of both the courts below.
6. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:
1) Whether the lower appellate Court erred in misreading Exs.B.1 and B.2, as if they contain admission by the appellant that the 1st defendant is his wife, while factually there is no such admission therein?

2) Whether the lower appellate Court was correct in refusing the relief of declaration to the appellant having held that the first respondent was not the wife of the appellant and was having only illegal intimacy with him?

7. This Court paid its full attention on the submissions made by the learned counsel for the appellant and also the learned counsel for the respondents.

8. As could be seen above, the appellant/plaintiff sought declaratory relief that the first defendant is not a legally wedded wife and the defendants 2 and 3 were not born out of the said wedlock and for consequential relief that the defendants should be injuncted from executing the order of maintenance passed in MC no.16/85 by the Chief Judicial Magistrate, Vellore. The specific case of the plaintiff was that he married one Chandra and was living with her; that even prior to the marriage, he had got sexual affairs with the first defendant and out of the same, no children were born; that the first defendant, even prior to that, was married to one Kasi and out of the said wedlock, she got seven children and that the sexual affairs with the first defendant was during the subsistence of the marriage with Kasi, and thus, all the contentions put forth by the first defendant that there was a marriage between the plaintiff and the first defendant and that out of the said wedlock two children were born were all false; that it is true that there was a maintenance case filed by her in MC No.16/85, wherein, he filed a memo even without knowing the contents of the same and in order to get rid of the case; that the Court has awarded maintenance of Rs.100/-; that since it was put in execution, there arose a necessity for filing the suit for declaration and other reliefs.

9. What was all contended by the defendants before the courts below and equally here also is that it is true that the first defendant originally was married to one Kasi; that the said marriage ended into divorce; that only subsequent to the divorce, the first defendant married the present plaintiff and the defendants 2 and 3 were born out of the said wedlock; that during the subsistence of the marriage between the plaintiff and the first defendant, the plaintiff married one Chandra, and thus, it was a bigamous marriage, and hence, declaration sought for cannot be granted, both on facts and in law.

10. After careful consideration of the rival submissions and the scrutiny of the available materials, this Court is of the considered opinion that the plaintiff's relief of declaration that the first defendant is not a legally wedded wife has got to be granted in his favour. Admittedly, the plaintiff had sexual affairs with the first defendant. According to the plaintiff, even prior to that, the first defendant was married to one Kasi and the marriage was in subsistence. On the contrary, the case of the first defendant was that it is true that she was originally married to one Kasi and the said marriage ended into divorce and only subsequent thereto, the present marriage between the first defendant and the plaintiff took place and the marriage of the plaintiff with one Chandra was illegal and bigamous, since it was done during the subsistence of the marriage between the plaintiff and the first defendant.

11. Admittedly, even as per the averment in the written statement, the first defendant was originally married to one Kasi. According to the first defendant, the said marriage tie was severed by way of a divorce customary. No evidence was forthcoming from the first defendant's side to

prove the same. The first appellate court has discussed the evidence, in extenso, and pointed out number of circumstances indicating that the plea of divorce by the first defendant as to the marriage with Kasi was not proved, and thus, it was a subsisting one. In the absence of any proof of the customary divorce as pleaded by the first defendant with one Kasi, it has to be necessarily found that the marriage of the first defendant with one Kasi was in subsistence. If to be so, the marriage of the first defendant with the plaintiff even assuming to be true that cannot confer the status of wife to the first defendant, because the marriage should have been taken place during the subsistence of the earlier marriage taken place between the first defendant and Kasi. But the lower court has granted decree regarding the status of wife to the first defendant only in view of the memo filed by the plaintiff in the maintenance proceedings pending before the Court under Section 125 of Cr.P.C. From the available materials, it could be well seen that it was not a case where the evidence was recorded, but only a memo was filed. Needless to say that in the proceedings under Section 125 of Cr.P.C., the Court was not expected to investigate into the factum of marriage strictly, but it would be suffice to take a decision on the available evidence even without going into the factum of marriage.

12. Hence, under the stated circumstances, having come to a conclusion in view of the available evidence that the divorce of marriage between the first defendant and Kasi, as pleaded by the first defendant, was not proved, the first appellate court should have found that the alleged marriage of the first defendant with the plaintiff was one illegal, and hence, declaration that the first defendant is not the legally wedded wife of the plaintiff, as asked for, should be granted. Insofar as the second and third defendants, there was available evidence to show that the second and third defendants were born to the first defendant through the plaintiff, and thus, they are entitled to maintenance. Therefore, insofar as the defendants 2 and 3, the relief that could be granted was the order of maintenance granted in favour of the defendants 2 and 3 and the same has got to be sustained and in all other respects, the suit has got to be dismissed.

13. What is contemplated under Section 125 of Cr.P.C. in the maintenance proceedings, a summary in nature, is that the Chief Judicial Magistrate cannot decide the status of the parties. Under the stated circumstances, the relief is granted in respect of declaration declaring that the first defendant is not the legally wedded wife of the plaintiff. The defendants 2 and 3 are not legally born children to the first defendant through the plaintiff. But, they are entitled to maintenance in view of the proof available that they were born to the first defendant through the plaintiff. Hence, the order of maintenance passed in MC No.16 of 1985 in respect of defendants 2 and 3 is not disturbed by this Court.

14. In view of the reasons stated therein, this second appeal is partly allowed, leaving the parties to bear their costs. Consequently, connected cross objection is dismissed.

Index : Yes
Internet : Yes

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To

1. The Principal District Judge, Vellore
2. The Additional District Munsif, Vellore
3. The Record Keeper, VR Section,
High Court, Madras